

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | |
|---|---------------------------|
| ANGELA JONES as Special Administrator) | |
| of the Estate of Suzanne Anderson,) | |
|) | |
| Plaintiff,) | |
|) | |
| v.) | No. 1:21-cv-00163-JPH-TAB |
|) | |
| THOMAS B. RADEY,) | |
|) | |
| Defendant.) | |

ORDER DENYING MOTION FOR CLERK'S DEFAULT

Plaintiff, Angela Jones, has filed a motion for clerk's entry of default against Defendant Thomas B. Radey. Dkt. 30. In support, she attaches a declaration of service and supporting documents showing that in June 2020, she served Mr. Radey with the initial complaint filed in this case. Dkt. 30-1 at 1, 4, 7, 10–14; *see Netzsch Premier Tech., LLC v. Puhler Feinmahltechnik GmbH*, No. 1:16-cv-781-WTL-MPB, 2016 WL 6573886 at *2 (S.D. Ind. Nov. 7, 2016). The operative complaint, however, is Ms. Jones's First Amended Complaint, which she filed on December 17, 2020. Dkt. 1-1; *see Beal v. Beller*, 847 F.3d 897, 901 (7th Cir. 2017) ("For pleading purposes, once an amended complaint is filed, the original complaint drops out of the picture.").

Because Ms. Jones has not shown that she served Mr. Radey with the operative complaint, her motion for clerk's entry of default is **DENIED without prejudice**. Dkt. [30]; *see In re Kutrubis*, 550 Fed. App'x 306, 309 (7th Cir. 2013) (explaining that the "failure to effectuate proper service" of the operative

complaint under Federal Rules of Civil Procedure 4 and 5 "would . . . invalidate any resulting judgment"); *Netzsch Premier Tech.*, 2016 WL 6573886 at *2.

SO ORDERED.

Date: 11/19/2021

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

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